856.

SUPREME COURT OF THE UNITED STATES.

No. 106.

ABRAHAM COLBY, PLAINTIFF IN ERROR,

vs.

JAMES LEDDEN.

IN ERROR TO THE SUPERIOR COURT OF JUDICATURE OF THE STATE OF NEW HAMPSHIRE.

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J. & G. S. Gideon, printers.

FOURTH JUDICIAL DISTRICT, *Carroll, ss:*

The State of New Hampshire, to the honorable Joel Parker, esquire, chief justice of our court of common pleas, within and for said county, greeting:

Whereas in the record and process, as well as in giving judgment, in a suit that was in our court of common pleas, holden at Ossipee, within and for our county of Carroll, on the third Tuesday of May, in the year of our Lord one thousand eight hundred and forty-five, between James Ledden, of Miramichi, in the county of Northumberland and province of New Brunswick, merchant, surviving partner of James Abbott, plaintiff, and Abraham Colby, of Eaton, in said county of Carroll, esquire, by the name of Abraham Colby, of Eaton, in said county of Strafford, esquire, surviving partner of the late firm of Colby and Emery, defendant; which suit was a plea of debt founded on a judgment recovered by the said James Ledden and James Abbott, the said James Abbott being then in full life, but since deceased, by the consideration of the justices of the superior court of judicature, held in the county of York, within and for the province of New Brunswick, at Frederickton, in said county of York, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and twenty-three, against the said Abraham Colby and one John Emery, then in full life, but since deceased, for the sum of two hundred and seventy-nine pounds five shillings and seven pence damages, equal in value to one thousand one hundred and seventeen dollars and eleven cents and two-thirds of a cent of the money of the United States of America, and costs of suit taxed at nine pounds four shillings and three pence, equal in value to thirty-six [dollars] and eighty-five cents of the money of the United States of America, as it is said manifest error hath happened to the great damage and injury of the said Abraham Colby, and as we by his grievous complaint perceive.

We, desiring the error, if any has been in this behalf, may be duly corrected, and full and speedy justice done to the parties aforesaid, command you that, if judgment be therein given, you distinctly and openly send us the record and process of the suit aforesaid, with all the matters touching them, together with this writ, so that we may have them at our superior court of judicature, to be holden at said Ossipee, within and for the fourth judicial district, on the fourth Tuesday of July next; that, inspecting the record and process aforesaid, we may, for the correcting that error therein, further cause to be done, what of right and according to the law of the land ought to be done.

Witness Joel Parker, esquire, at said Ossipee, the twenty-sixth day of June, A. D. 1845.

F. R. CHASE, *Clerk*.

THE STATE OF NEW HAMPSHIRE,
Carrol, ss: Court of Common Pleas,
Clerk's office, June 26th, A. D. 1845.

In obedience to the foregoing precept, I herewith return, distinctly and openly, a copy of the record and process aforesaid, with all matters touching them.

F. R. CHASE, *Clerk*.

STATE OF NEW HAMPSHIRE,
Fourth judicial district, Carroll, ss:

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy of the original on file.

In testimony whereof I have hereunto set my hand and affixed the [L. S.] seal of said court, this third day of November, A. D. 1845.

FRANCIS R. CHASE, *Clerk*.

THE STATE OF NEW HAMPSHIRE,
[L. S.] *Fourth judicial district, Carroll, ss*·

To the sheriff of any county in this State, or his deputy, greeting:

Whereas in the record and process, and also the giving judgment, in a suit which was before our justices of our court of common pleas, holden at Ossipee, within and for our county of Carroll, on the third Tuesday of May, in the year of our Lord one thousand eight hundred and forty-five, by a writ of said court, between James Ledden, of Miramiche, in the county of Northumberland, and province of New Brunswick, merchant, surviving partner of James Abbott, plaintiff, and Abraham Colby, of Eaton, in said county of Carroll, esquire, by the name of Abraham Colby, of Eaton, in said county of Strafford, esquire, surviving partner of the late firm of Colby and Emery, defendant, which suit was a plea of debt, founded on a judgment recovered by the said James Ledden and James Abbott, the said James Abbott being then in full life, but since deceased, by the consideration of the justices of the superior court of judicature, held in the county of York, within and for the province of New Brunswick, at Frederickton, in said county of York, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and twenty-three, against the said Abraham Colby and one John Emery, then in full life, but since deceased, for the sum of two hundred and seventy-nine pounds five shillings and seven pence damages, equal in value to one thousand one hundred seventeen dollars and eleven cents and two-thirds of a cent, of the money of the United States of America, and costs of suit taxed at nine pounds four shillings and three pence, equal in value to thirty-six dollars and eighty-five cents, of the money of the United States of America, in which suit judgment was rendered at said May term of said court of common pleas, that said James Ledden recover of said Abraham Colby the sum of two thousand nine hundred and sixteen dollars damages, and costs of court taxed at one hundred and sixty-nine dollars

and twenty-nine cents, whereof the said Abraham Colby is convict, manifest error hath happened, as it is said, to the grievous damage of the said Abraham Colby, as by his complaint we perceive; the record of which judgment and process we, for certain reasons, have caused to be brought before us in our superior court of judicature.

We, therefore, desiring that the errror, if there be any, may be duly corrected, and full and speedy justice herein done to the parties aforesaid, command you that you make known to the said James Ledden, that he be before our justices of our superior court of judicature, next to be holden at Ossipee, in our county of Carroll, within and for our fourth judicial district, on the fourth Tuesday of July next, to hear the record and process aforesaid, if he think it expedient, and further to do and receive that which the same court shall consider in this behalf. And have you there this writ, with your doings therein.

Witness Joel Parker, esquire, at Ossipee, in said county, the twenty-sixth day of June, A. D. 1845.

F. R. CHASE, *Clerk*.

STATE OF NEW HAMPSHIRE,
Fourth judicial district, Carroll, ss:

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy of the original on file.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this third day of November, A. D. 1845.
[L. S.]

FRANCIS R. CHASE, *Clerk*.

CARROLL, *ss:* *July 5th, A. D.* 1845.

James Ledden, the defendant in the within writ, not being an inhabitant of New Hampshire, I gave Obid Hall, of Tamworth, in said county, the attorney who appeared for said Ledden in the original action, in hand a true and attested copy of the within writ, with a true and attested copy of this my return endorsed thereon.

THOMAS W. MORDOUGH, *Dep. shff.*

Service	-	-	-	$0 23
Travel	-	-	-	1 25
Copy -	-	-	-	2 00
				$3 48

A true copy. Attest: F. R. CHASE, *Clerk*.

THE STATE OF NEW HAMPSHIRE, *Strafford, ss:*

[SEAL.] To the sheriff of any county in this State, or his deputy, greeting:

We command you to attach the goods or estate of Abraham Colby, of Eaton, in said county of Strafford, esquire, surviving partner of the

late firm of Colby & Emery, to the value of three thousand dollars, and for the want thereof, to take the body of the said Colby, (if he may be found in your precinct,) and him safely keep, so that you have him before our justices of our court of common pleas, to be holden at Gilford, within and for our said county of Strafford, on the first Tuesday of August next, then and there, in our said court, to answer unto James Ledden, of Miramiche, in the county of Northumberland, and province of New Brunswick, merchant, surviving partner of one James Abbott, in a plea of debt; for that the said James Ledden and the said James Abbott, the said Jas. Abbott being then living, but since dec'd, by the consideration of the justices of the superior court of judicature, held in the county of York, within and for the province of New Brunswick, to wit, at Fredrickton, in said county of York, to wit, at Gilford, in said county of Strafford, on the 14th day of October, in the year of our Lord one thousand eight hundred and twenty-three, recovered judgment against the said Abraham Colby, and one John Emery, then living, but since deceased, for the sum of two hundred and seventy-nine pounds five shillings and seven pence—damages and costs of suit taxed at nine pounds four shillings and three pence, as by the record thereof, now remaining in said court, appears; a copy whereof, duly authenticated, the said James Ledden here in court produces; which said judgment is in full force, and not reversed, annulled, or satisfied. Whereby an action hath accrued to the said James Ledden, as surviving partner of the said James Abbott, to have and recover of the said Abraham Colby, as surviving partner of the said John Emery, the said several sums of two hundred seventy-nine pounds five shillings seven pence, and of nine pounds four shillings and three pence—amounting, in the whole, to two hundred and eighty-eight pounds nine shillings and ten pence.

Yet, though often requested, the said Colby and Emery never paid said sums in the lifetime of the said Emery, nor hath the said Colby paid said sums since the decease of the said Emery, but detains them. Also for that the said James Ledden and James Abbott, the said James Abbott being then living, but since deceased, by the consideration of the justices of the superior court of judicature, held in the county of York, within and for the province of New Brunswick, to wit, at Fredrickton, in said county of York, to wit, at Guilford, in said county of Strafford, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and twenty-three, recovered judgment against said Abraham Colby, and one John Emery, then living, but since deceased, for the sum of two hundred and seventy-nine pounds five shillings and seven pence damages, equal to eleven hundred and seventeen dollars and eleven cents and two-thirds of a cent, of the currency of the United States of America, and costs of suit taxed at nine pounds four shillings and three pence, equal to thirty-six dollars and eighty-five cents of the currency of the said United States, as by the record thereof, remaining in said court, appears; a copy whereof, duly authenticated, the said James Ledden here in court produces; which said judgment is in full force, and not reversed, annulled, or satisfied.

Whereby an action hath accrued to the said James Ledden, as surviving partner of the said James Abbott, to have and recover of the said Abraham Colby, as surviving partner of the said John Emery, the said several sums of two hundred and seventy-nine pounds five shillings and seven pence, and nine pounds four shillings and three pence, amounting in the whole to two hundred and eighty-eight pounds nine shillings and ten pence, equal to eleven hundred and fifty-three dollars and ninety-six cents and two-thirds of a cent, currency of the said United States, together with interest on the same. Yet, though often requested, said Colby and Emery never paid the same in the lifetime of the said Emery, nor has said Colby paid said sums since the decease of the said Emery, but detains them, to the damage of the said plaintiff (as he says) the sum of three thousand dollars, which shall then and there be made to appear, with other due damages; and have you there this writ, with your doings therein.

Witness William M. Richardson, esquire, at Gilford, the eleventh day of July, anno domini one thousand eight hundred and thirty-seven.

F. COGSWELL, *Clerk*.

STATE OF NEW HAMPSHIRE,
Fourth judicial district, Carroll, ss:

I, Francis R. Chase, clerk of the superor court of judicature for said county, hereby certify, that the foregoing is a true copy.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] the seal of said court, this third day of November, anno domini 1845.

FRANCIS R. CHASE,
Clerk.

STRAFFORD, *ss:*

July 13, 1837. I attached the homestead farm of the within named Colby, situated in Eaton, in said county, containing about one hundred acres, with the buildings thereon. Also the saw mill and mill lot situated in said Eaton, on the road leading from said Eaton to Tamworth village. Also, the store and store lot situated at said Eaton, with the dwelling house and other buildings thereon, all of the value of two thousand dollars; and at the same time I left in the town clerk's office in Eaton a true and attested copy of this writ, with a true and attested copy of this my return thereon.

ENOCH REMICK,
D. Sheriff.

Also, on the same day I attached one horse, of the value of fifty dollars; one yoke of oxen, valued at fifty dollars; one chaise valued at one hundred dollars; and at the same time left him a summons at his last and usual place of abode, in Eaton, with my name and office endorsed thereon.

ENOCH REMICK,
Deputy Sheriff.

Fees.

Service	$0 23
Travel	1 20
Securing property	1 00
Copy	1 25
Paid clerk	0 17
Travel to clerk	0 06
	$3 91

STATE OF NEW HAMPSHIRE,

Fourth judicial district, Carroll, ss:

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy of the original return on the writ on file.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, this third day of November, A. D. 1845.

FRANCIS R. CHASE,
Clerk.

CARROLL, *ss:*

Court of common pleas, October, A. D 1843.

JAMES LEDDEN, plaintiff,
vs
ABRAHAM COLBY, defendant. } In a plea—debt.

And the said Abraham Colby comes and defends, &c,, when, &c., and says that the said Ledden, his action aforesaid thereof against him, the said Colby, ought not further to have or maintain, because he, the said Colby, says that he, the said Colby, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-three, resided in the district of New Hampshire, and that on that day he, by petition, setting forth to the best of his knowledge and belief a list of his creditors, their respective places of residence, and the amount due each, together with an accurate inventory of his property, rights and credits, of every name, kind, and description, and the location and situation of each and every parcel and portion thereof, verified by his oath, applied to the district court of the United States for the district of New Hampshire, by filing said petition in the office of the clerk of said district court for the benefit of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841; and in said petition he, the said Colby, declared himself unable to meet his debts and engagements. And the said Colby further in fact says, that upon said petition being filed as aforesaid, notice thereof was published at least twenty days before the hearing thereof, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and forty-three, in one or more public

Whereby an action hath accrued to the said James Ledden, as surviving partner of the said James Abbott, to have and recover of the said Abraham Colby, as surviving partner of the said John Emery, the said several sums of two hundred and seventy-nine pounds five shillings and seven pence, and nine pounds four shillings and three pence, amounting in the whole to two hundred and eighty-eight pounds nine shillings and ten pence, equal to eleven hundred and fifty-three dollars and ninety-six cents and two-thirds of a cent, currency of the said United States, together with interest on the same. Yet, though often requested, said Colby and Emery never paid the same in the lifetime of the said Emery, nor has said Colby paid said sums since the decease of the said Emery, but detains them, to the damage of the said plaintiff (as he says) the sum of three thousand dollars, which shall then and there be made to appear, with other due damages; and have you there this writ, with your doings therein.

Witness William M. Richardson, esquire, at Gilford, the eleventh day of July, anno dom[illegible] one thousand eight hundred and thirty-seven.

F. COGSWELL, *Clerk*.

STATE OF NEW HAMPSHIRE,
Fourth judicial district, Carroll, ss:

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FRANCIS R. CHASE,
Clerk.

STRAFFORD, *ss:*

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ENOCH REMICK,
D. Sheriff.

Also, on the same day I attached one horse, of the value of fifty dollars; one yoke of oxen, valued at fifty dollars; one chaise valued at one hundred dollars; and at the same time left him a summons at his last and usual place of abode, in Eaton, with my name and office endorsed thereon.

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Deputy Sheriff.

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FRANCIS R. CHASE,
Clerk.

CARROLL, *ss:*

Court of common pleas, October, A. D. 1843.

JAMES LEDDEN, plaintiff,
vs
ABRAHAM COLBY, defendant. } In a plea—debt.

And the said Abraham Colby comes and defends, &c,, when, &c., and says that the said Ledden, his action aforesaid thereof against him, the said Colby, ought not further to have or maintain, because he, the said Colby, says that he, the said Colby, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-three, resided in the district of New Hampshire, and that on that day he, by petition, setting forth to the best of his knowledge and belief a list of his creditors, their respective places of residence, and the amount due each, together with an accurate inventory of his property, rights and credits, of every name, kind, and description, and the location and situation of each and every parcel and portion thereof, verified by his oath, applied to the district court of the United States for the district of New Hampshire, by filing said petition in the office of the clerk of said district court for the benefit of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841; and in said petition he, the said Colby, declared himself unable to meet his debts and engagements. And the said Colby further in fact says, that upon said petition being filed as aforesaid, notice thereof was published at least twenty days before the hearing thereof, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and forty-three, in one or more public

Whereby an action hath accrued to the said James Ledden, as surviving partner of the said James Abbott, to have and recover of the said Abraham Colby, as surviving partner of the said John Emery, the said several sums of two hundred and seventy-nine pounds five shillings and seven pence, and nine pounds four shillings and three pence, amounting in the whole to two hundred and eighty-eight pounds nine shillings and ten pence, equal to eleven hundred and fifty-three dollars and ninety-six cents and two-thirds of a cent, currency of the said United States, together with interest on the same. Yet, though often requested, said Colby and Emery never paid the same in the lifetime of the said Emery, nor has said Colby paid said sums since the decease of the said Emery, but detains them, to the damage of the said plaintiff (as he says) the sum of three thousand dollars, which shall then and there be made to appear, with other due damages; and have you there this writ, with your doings therein.

Witness William M. Richardson, esquire, at Gilford, the eleventh day of July, anno domini one thousand eight hundred and thirty-seven.

F. COGSWELL, *Clerk*.

STATE OF NEW HAMPSHIRE,
Fourth judicial district, Carroll, ss:

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FRANCIS R. CHASE,
Clerk.

STRAFFORD, *ss:*

July 13, 1837. I attached the homestead farm of the within named Colby, situated in Eaton, in said county, containing about one hundred acres, with the buildings thereon. Also the saw mill and mill lot situated in said Eaton, on the road leading from said Eaton to Tamworth village. Also, the store and store lot situated at said Eaton, with the dwelling house and other buildings thereon, all of the value of two thousand dollars; and at the same time I left in the town clerk's office in Eaton a true and attested copy of this writ, with a true and attested copy of this my return thereon.

ENOCH REMICK,
D. Sheriff.

Also, on the same day I attached one horse, of the value of fifty dollars; one yoke of oxen, valued at fifty dollars; one chaise valued at one hundred dollars; and at the same time left him a summons at his last and usual place of abode, in Eaton, with my name and office endorsed thereon.

ENOCH REMICK,
Deputy Sheriff.

Fees.

Service	$0 23
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STATE OF NEW HAMPSHIRE,

Fourth judicial district, Carroll, ss:

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In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court, this third day of November, A. D. 1845.

FRANCIS R. CHASE,
Clerk.

CARROLL, *ss:*

Court of common pleas, October, A. D 1843.

JAMES LEDDEN, plaintiff,
vs
ABRAHAM COLBY, defendant. } In a plea—debt.

And the said Abraham Colby comes and defends, &c,, when, &c., and says that the said Ledden, his action aforesaid thereof against him, the said Colby, ought not further to have or maintain, because he, the said Colby, says that he, the said Colby, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-three, resided in the district of New Hampshire, and that on that day he, by petition, setting forth to the best of his knowledge and belief a list of his creditors, their respective places of residence, and the amount due each, together with an accurate inventory of his property, rights and credits, of every name, kind, and description, and the location and situation of each and every parcel and portion thereof, verified by his oath, applied to the district court of the United States for the district of New Hampshire, by filing said petition in the office of the clerk of said district court for the benefit of an act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841; and in said petition he, the said Colby, declared himself unable to meet his debts and engagements. And the said Colby further in fact says, that upon said petition being filed as aforesaid, notice thereof was published at least twenty days before the hearing thereof, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and forty-three, in one or more public

newspapers printed in said district, designated by said district court; and that upon the hearing of said petition by said district court, at Portsmouth, in said district, on said twenty-second day of March, he was declared a bankrupt by a decree of said district court; and said Colby further in fact says, that afterwards, to wit, on the twenty-second of said March he filed his petition in the office of the clerk of said district court, which had declared him a bankrupt as aforesaid, for a full discharge from all his debts proveable under said act of Congress, in said matter of bankruptcy, to be decreed and allowed him, and a certificate thereof granted by said district court. And said Colby further in fact says, that notice of said petition for said discharge to all creditors who had proved their debts, and other persons in interest, to appear at a particular time and place, being the time and place of discharge, and the order of court thereof for the hearing thereof, were published at least seventy days before the twentieth day of September, in the year of our Lord one thousand eight hundred and forty-three, [that] being the day appointed for the hearing thereof, in some public newspaper printed in said district, designated by said district court; and when the residence of any creditor was known, notice thereof was given such creditor in the form required and prescribed, and in the mode required and prescribed by said act of Congress and said district court. And said Colby further in fact says, that he bona fide surrendered all his property and rights of property, as required by said act of Congress, with the exception mentioned in said act of Congress, for the benefit of his creditors, and fully complied with, and obeyed all the orders and directions which from time to time were passed by the proper court, and otherwise conformed to all the other requisitions of said act of Congress. And said Colby further in fact says, that said district court at said Portsmouth, on said twentieth day of September, decreed and allowed him, said Colby, a full discharge from all his debts proveable under said act of Congress in said matter of bankruptcy, and on the twentieth day of said September granted him a certificate of said discharge. And the said Colby further in fact says, that the said plaintiff's said claim, at the time of filing said petition for a discharge on said fourth day of January, was, and ever since has been, proveable under said act of Congress in said matter of bankruptcy, and this the said Colby is ready to verify. Wherefore, the said Colby prays judgment if the plaintiff his action aforesaid thereof against him ought further to have or maintain, and for his costs.

By his attorney, JOSIAH H. HOBBS.

STATE OF NEW HAMPSHIRE,

Fourth judicial district, Carroll, ss:

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, this third day of November, anno domini 1845. [L. S.]

FRANCIS R. CHASE, *Clerk*.

66.

CARROLL, *ss*: *Court of common pleas, April term*, 1844.

JAMES LEDDEN
vs.
ABRAHAM COLBY.

And now, the said James Ledden comes and says, that he ought not to be precluded from further having and maintaining his action aforesaid thereof against him, the said Abraham Colby, because, he says, that long before the passage of said act of Congress, to establish a uniform system of bankruptcy throughout the United States, and previous to the filing by said Colby of his aforesaid application for the benefit of said act of Congress in the said Colby's plea set forth, to wit, on the thirteenth day of July, in the year of our Lord one thousand eight hundred and thirty-seven, he, the said James Ledden, in good faith, and to secure a just debt due from said Colby to said Ledden, caused to be attached on his writ issued in this action, and the said attachment to be perfected as required by the laws of this State, at Eaton, in said county, the homestead farm of said Colby, situate in said Eaton, containing one hundred acres of land, with the buildings thereon; also, the saw mill and mill lot, situate in said Eaton, on the road leading from said Eaton to Tamworth; also, the store and store lot, situate at Eaton, with the dwelling house and other buildings thereon, all of the value of two thousand dollars; also, one horse, of the value of fifty dollars; one yoke of oxen, of the value of fifty dollars; one chaise, of the value of one hundred dollars, all the property of said Abraham Colby, and then subject to be attached and holden as his property for the payment of the plaintiff's claim aforesaid, and the plaintiff avers said attachment on the passage of said act of Congress, and on the filing of said application, and now is a lien by the laws of the State of New Hampshire; and said property holden in said suit to satisfy said claim, *and* not affected by said act of Congress; and this he is ready to verify.

Wherefore, he prays judgment against said property so attached, and for his damages and costs.

By SAMUEL EMERSON, *his attorney*.

STATE OF NEW HAMPSHIRE,
Fourth judicial district, Carroll, ss:

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy.

In testimony whereof, I have hereunto set my hand, and affixed the seal of said court, this third day of November, anno domini 1845.

[L. S.]

FRANCIS R. CHASE, *Clerk*.

Demurrer to replication.

CARROLL, *ss*: *Court of common pleas, October term, A. D.* 1844.

JAMES LEDDEN
vs.
ABRAHAM COLBY.

And the said defendant saith, that the replication of the said plaintiff to the said plea in bar of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff further to have or maintain his aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same; and this the said defendant is ready to verify. Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment, if the said plaintiff ought further to have or maintain his aforesaid action thereof against him, &c.

By his attorney, JOSIAH H. HOBBS.

And the said defendant states and shows to the court here the following causes of demurrer in law to said replication; that is to say, that the said plaintiff, in and by his said replication, has not shown and set forth that said writ in said replication mentioned was served, executed, and returned by the sheriff or his deputy, or a coroner of the county in which said homestead farm, with the buildings thereon, mill and mill lot, store and store lot, with the dwelling house and other buildings thereon, horse, yoke of oxen, and chaise, in said replication mentioned, were situated, or by any sheriff or his deputy, or coroner of any county in this State.

For that the said plaintiff, in and by his said replication, has not shown and set forth, that the officer who made the attachment of said homestead farm, with the buildings thereon, mill and mill lot, store and store lot, with the dwelling house and other buildings thereon, on said writ in said replication mentioned, left a true and attested copy of said writ, together with a true and attested copy of his return thereon, at the office of the town clerk of the town of Eaton, in which said real estate is in said replication alleged to lie, nor with the clerk of the court of common pleas in the county where said real estate lay.

For that the said plaintiff, in and by his said replication, has not shown and set forth, that the officer who attached said horse, yoke of oxen, and chaise, in said replication mentioned, took the same into his custody and possession, and still retains custody and possession thereof, as security for such judgment, as the plaintiff in his said suit may obtain.

And, also, for that the said replication is in other respects uncertain, informal, and insufficient &c.

STATE OF NEW HAMPSHIRE,
Fourth judicial district, Carroll, ss:

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify that the foregoing is a true copy.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, this third day of November, anno domini 1845.

FRANCIS R. CHASE, *Clerk*.

And the said Ledden says, that the matters and things in his said replication alleged, are good and sufficient in law to answer the said plea of the said defendant, and the matters and things therein contained; and, therefore, for want of a sufficient answer by the said defendant to the said replication of the said plaintiff in this behalf, he prays judgment, &c.

By his attorney, OBED HALL.

STATE OF NEW HAMPSHIRE,
Fourth judicial district, Carroll, ss:

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, this third day of November, anno domini 1845.

FRANCIS R. CHASE, *Clerk*.

STATE OF NEW HAMPSHIRE, *Carroll, ss:*

At the court of common pleas, holden at Ossipee, within and for said county of Carroll, on the third Tuesday of May, in the year of our Lord one thousand eight hundred and forty-five.

Present, the Hon. Andrew S. Woods, presiding justice; the Hon. Nathaniel Rodgers, the Hon. Thomas P. Drake, justices of said court.

JAMES LEDDEN, plaintiff,
against
ABRAHAM COLBY, defendant.

In a plea of debt, for that the said James Ledden and said James Abbott, the said James Abbott being then living, but since deceased, by the consideration of the justices of the superior court of judicature, held in the county of York, within and for the province of New Brunswick, to wit, at Fredrickton, in said county of York, to wit, at Gilford, in said county of Strafford, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and twenty-three, recovered judgment against the said Abraham Colby and one John Emery, then living, but since deceased, for the sum of two hundred and seventy-nine pounds five shillings and seven pence, damages and costs of suit taxed at nine pounds four shillings and three pence, as by the record thereof now remaining in said court appears, a copy whereof duly authenticated the said James Ledden here in court produces, which said judgment is

in full force, and not reversed, annulled, or satisfied, whereby an action hath accrued to the said James Ledden, as surviving partner of the said James Abbott, to have and recover of the said Abraham Colby, as surviving partner of the said John Emery, the said several sums of two hundred and seventy-nine pounds five shillings and seven pence, and of nine pounds four shillings and three pence, amounting in the whole to two hundred and eighty-eight pounds nine shillings and ten pence. Yet, though often requested, the said Colby and Emery never paid said sums in the lifetime of the said Emery, nor hath the said Colby paid said sums since the decease of the said Emery, but detains them.

Also, for that the said James Ledden and James Abbott, the said James Abbott being then living, but since deceased, by the consideration of the justices of the superior court of judicature, held in the county of York, within and for the province of New Brunswick, to wit, at Frederickton, in said county of York, to wit, at Gilford, in said county of Strafford, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and twenty-three, recovered judgment against said Abraham Colby and one John Emery, then living, but since deceased, for the sum of two hundred seventy-nine pounds five shillings and seven pence, damages, equal to eleven hundred and seventeen dollars and eleven cents and two-thirds of a cent, of the currency of the United States of America, and costs of suit taxed at nine pounds four shillings and three pence, equal to thirty-six dollars and eighty-five cents, of the currency of the said United States, as by the record thereof now remaining in said court appears, a copy whereof, duly authenticated, the said James Ledden here in court produces, which said judgment is in full force, and not reversed, annulled, or satisfied, whereby an action hath accrued to the said James Ledden, as surviving partner of the said James Abbott, to have and recover of the said Abraham Colby, as surviving partner of the said John Emery, the said several sums of two hundred and seventy-nine pounds five shillings and seven pence, and of nine pounds four shillings and three pence, amounting in the whole to two hundred and eighty-eight pounds nine shillings and ten pence, equal to eleven hundred and fifty-three dollars and ninety-six cents and two thirds of a cent, currency of the said United States, together with interest on the same. Yet though often requested, said Colby and Emery never paid the same in the lifetime of the said Emery, nor has said Colby paid said sums since the decease of the said Emery, but detains them.

To the damage of the said plaintiff, as he says, the sum of three thousand dollars.

This action was commenced and entered at the court of common pleas, holden at Gilford, in and for said county of Strafford, on the first Tuesday of August, A. D. 1837. The parties appeared, and the action was continued from term to term, until the January term of said court, A. D. 1841, when the action was removed from said county of Strafford to said county of Carroll, and continued to the October term of said court, A. D. 1841, when the said Abraham Colby "comes and defends the wrong and injury, when &c., and says, that he does not owe the

said sum of money above demanded, or any part thereof, in manner and form as the said James Ledden hath above thereof complained against him; and of this he, the said Abraham Colby, puts himself upon the country.

By his attorney, JOEL EASTMAN.

And the plaintiff doth the like.

By HALL & EMERSON,
His attorneys."

The case was duly submitted to a jury, who return their verdict into court, "that the said Abraham Colby does owe the said James Ledden the sum of twenty-four hundred dollars, in manner and form as he has in his declaration alleged." And upon questions arising, the action was ordered to be transferred to the superior court of judicature for determination, and continued from term to term in this court, until the October term, A. D. 1843, when "the said Abraham Colby comes and defends &c., when, &c., and says, that the said Ledden, his action afterwards thereof, against him, the said Colby, ought not further to have or maintain, because he, the said Colby, says that he, the said Colby, on the fourth day of January, in the year of our Lord one thousand eight hundred and forty-three, resided in the district of New Hampshire, and that on that day he, by petition, setting forth to the best of his knowledge and belief a list of his creditors, their respective places of residence, and the amount due each, together with an accurate inventory of his property, rights, and credits of every name, kind, and description, and the location and situation of each and every parcel and portion thereof, verified by his oath, applied to the district court of the United States for the district of New Hampshire, by filing said petition in the office of the clerk of said district court, for the benefit of an act of Congress, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841; and in said petition he, the said Colby, declared himself unable to meet his debts and engagements. And the said Colby further in fact says, that upon said petition being filed as aforasaid, notice thereof was published at least twenty days before the hearing thereof, on the twenty-second day of March, in the year of our Lord one thousand eight hundred and forty-three, in one or more public newspapers printed in said district, designated by said district court, and that upon the hearing of said petition by said district court, at Portsmouth, in said district, on said twenty-second day of March, he was declared a bankrupt by a decree of said district court. And said Colby further in fact says, that afterwards, to wit, on the twenty-second day of said March, he filed his petition in the office of the clerk of said district court, which had declared him a bankrupt as aforesaid, for a full discharge from all his debts, proveable under said act of Congress, in said matter of bankruptcy to be decreed and allowed him, and a certificate thereof granted by said district court. And said Colby further in fact says, that notice of said petition for said discharge to all creditors who had proved their debts, and other persons in interest, to appear at a par-

ticular time and place, being the time and place of discharge, and the order of the court thereon for the hearing thereof, were published at least seventy days, before the twentieth day of September, in the year of our Lord one thousand eight hundred and forty-three, being the day appointed for the hearing thereof, in some public newspaper printed in said district, designated by said district court; and when the residence of any creditor was known, notice thereof was given such creditor in the form required and prescribed, and in the mode required and prescribed by said act of Congress, and said district court. And said Colby further in fact says, that he bona fide surrendered all his property, and rights of property, as required by said act of Congress, with the exception mentioned in said act of Congress, for the benefit of his creditors, and fully complied with and obeyed all the orders and directions, which from time to time were passed by the proper court, and otherwise conformed to all the other requisitions of said act of Congress. And said Colby further in fact says, that said district court, at said Portsmouth, on said twentieth day of September, decreed and allowed him, said Colby, a full discharge from all his debts, proveable under said act of Congress in said matter of bankruptcy, and on the twentieth day of said September granted him a certificate of said discharge. And the said Colby further in fact says, that the said plaintiff's said claim, at the time of filing said petition for a discharge on said fourth day of January, was and ever since has been proveable under said act of Congress, in said matter of bankruptcy, and this the said Colby is ready to verify. Wherefore, the said Colby prays judgment, if the plaintiff his action aforesaid thereof against him ought further to have or maintain, and for his costs.

By his attorney, JOSIAH H. HOBBS.

The action is further continued to the April term of said court, A. D. 1844.

And now the said James Ledden comes and says that he ought not to be precluded from further having and maintaining his action aforesaid thereof against him, the said Abraham Colby, because he says that long before the passage of said act of Congress to establish a uniform system of bankruptcy throughout the United States, and previous to the filing by said Colby of his aforesaid application for the benefit of said act of Congress in said Colby's plea set forth, to wit, on the thirteenth day of July, in the year of our Lord one thousand eight hundred and thirty-seven, he, the said James Ledden, in good faith, and to secure a just debt due from said Colby to said Ledden, caused to be attached on his writ issued in this action, and the said attachment to be perfected, as required by the laws of this State, at Eaton, in said county, the homestead farm of said Colby, situate in said Eaton, containing one hundred acres of land, with the buildings thereon; also, the saw mill and mill lot situate in said Eaton, on the road leading from said Eaton to Tamworth; also, the store and store lot situate at Eaton, with the dwelling house and other buildings thereon, all of the value of two thousand dollars; also, one horse, of the value of fifty dollars, one yoke of oxen,

of the value of fifty dollars, one chaise, of the value of one hundred dollars, all the property of said Abraham Colby, and then subject to be attached and holden as his property for the payment of the plaintiff's claim aforesaid; and the plaintiff avers said attachment on the passage of said act of Congress, and on the filing of said application, and now is, a lien by the laws of the State of New Hampshire, and said property is holden in said suit to satisfy said claim, and not affected by said act of Congress. And this he is ready to verify. Wherefore, he prays judgment against said property so attached, and for his damages and costs.

By SAMUEL EMERSON, *his att'y*.

The action is further continued. And at the October term, A. D. 1844, the said defendant saith, that the replication of the said plaintiff to the said plea in bar of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff further to have or maintain his aforesaid action thereof against the said defendant, and that he, the said defendant, is not bound by law to answer the same. And this the said defendant is ready to verify. Wherefore, by reason of the insufficiency of the said replication in this behalf, the said defendant prays judgment, if the said plaintiff ought further to have or maintain his aforesaid action thereof against him, &c.

By his attorney, JOSIAH H. HOBBS.

And the said defendant states and shows to the court here the following causes of demurrer in law to said replication, that is to say, that the said plaintiff, in and by his said replication, has not shown and set forth that said writ in said replication mentioned was served, executed, and returned by the sheriff or his deputy, or a coroner of the county in which said homestead farm, with the buildings thereon, mill and mill lot, store and store lot, with the dwelling house and other buildings thereon, horse, yoke of oxen, and chaise, in said replication mentioned, were situated, or by any sheriff, or his deputy, or coroner, of any county in this State. For that the said plaintiff, in and by his said replication, has not shown and set forth that the officer who made the attachment of said homestead farm, with the buildings thereon, mill and mill lot, store and store lot, with the dwelling house and other buildings thereon, on said writ in said replication mentioned, left a true and attested copy of said writ, together with a true and attested copy of his return thereon, at the office of the town clerk of the town of Eaton, in which said real estate is in said replication alleged to lie, nor with the clerk of the court of common pleas in the county where said real estate lay.

For that the said plaintiff, in and by his said replication, has not shown and set forth that the officer who attached said horse, yoke of oxen, and chaise, in said replication mentioned, took the same into his custody and possession, and still retains custody and possession thereof, as security for such judgment as the plaintiff in his said suit may obtain.

And also for that the said replication is in other respects uncertain, informal, and insufficient, &c.

And the said Ledden says, that the matters and things in his said replication alleged are good and sufficient in law to answer the said plea of the said defendant, and the matters and things therein contained; and therefore, for want of a sufficient answer by the said defendant to the said replication of the said plaintiff in this behalf, he prays judgment, &c.

By his attorney, OBED HALL.

And now, at this term, it is ordered by the court that the demurrer be overruled, that the replication is good and sufficient in law for the plaintiff to have judgment against the property attached on the original writ, and that the said James Ledden recover two thousand nine hundred and sixteen dollars, and costs of court taxed at one hundred and sixty-nine dollars and twenty-nine cents, to be satisfied only out of the property attached on the original writ, and that execution issue accordingly.

Execution issued June 19th, 1845.

A true copy of record.

Attest: F. R. CHASE, *Clerk*.

STATE OF NEW HAMPSHIRE, *Carroll, ss:*

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy.

In testimony whereof, I have hereto set my hand, and affixed the [SEAL.] seal of said court, this third day of November, A. D. 1845.

FRANCIS R. CHASE, *Clerk*.

STATE OF NEW HAMPSHIRE, *Carroll, ss:*

Fourth judicial district, superior court of judicature, July term, A. D. 1845.

ABRAHAM COLBY, plaintiff in error,
vs.
JAMES LEDDEN.

Assignment of errors.

And the said Abraham Colby comes into court and says, that, in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, to wit, that in the record, proceedings, and judgment aforesaid, it appears that there was drawn in question the construction of a statute of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841, and that the decision was against the title, right, privilege, and exemption specially set up and claimed by said Abraham Colby under said statute.

There is also manifest error in this, that, by the record, proceedings, and judgment aforesaid, it appears that there was drawn in question the construction of two clauses of a statute of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the

United States," passed August 19, 1841, one being part of the second section of said act, and in the words following: "And provided, also, that nothing in this act contained shall be construed to annul, destroy, or impair any lawful rights of married women or minors, or any liens, mortgages, or other securities on property, real or personal, which may be valid by the laws of the States respectively, and which are not inconsistent with the provisions of the second and fifth sections of this act;" the other being part of the fourth section of said act, and in the words following: "And such discharge and certificate, when duly granted, shall, in all courts of justice, be deemed full and complete discharge of all debts, contracts, and other engagements of such bankrupt, which are proveable under this act, and shall be and may be pleaded as a full and complete bar to all suits brought in any court of judicature whatever, and the same shall be conclusive evidence of itself in favor of such bankrupt, unless the same shall be impeached for some fraud or wilful concealment by him of his property or rights of property as aforesaid, contrary to the provisions of this act, on prior reasonable notice, specifying in writing such fraud or concealment;" and the decision was against the title, right, privilege, and exemption specially set up and claimed by said Abraham Colby under said clauses of said act of Congress.

There is also manifest error in this, that, by the record, proceedings, and judgment aforesaid, it appears that there was drawn in question the validity of the first section of a statute of the State of New Hampshire, made and passed by the general court of said State, February 11, 1791, title 10; and a statute of the State of New Hampshire, made and passed by the general court of said State, February 20, 1794, title 24, chapter 2, together prescribing and giving the form of the writ of attachment aforesaid; and the first, eleventh, sixteenth, twenty-fifth, and twenty-sixth sections of a statute of the State of New Hampshire, made and passed by the general court of said State, January 2, 1829, title 19, chapter 3, in the words following: "Be it enacted by the Senate and House of Representatives in general court convened, that all writs and processes issuing from the superior court of judicature and court of common pleas, shall be in the name of the State of New Hampshire, shall be under the seal of the court whence they issue, shall bear the test of the first justice of the court who is not a party, and be signed by the clerk of such court, and may be directed to the sheriff or his deputy of any county in the State, and shall have force in any county, and be obeyed and executed by any officer to whom the same shall be lawfully directed. And all original process, in either of the courts aforesaid, shall be summons or attachment, and shall be made out in the forms by law prescribed, and in civil cases shall be served and executed fifteen days before the sitting of the court to which such process is returnable, and shall be, by the officer who executed the same, returned to the court whence it issued, agreeably to the command therein given. And all writs issuing from any justice of the peace shall be in the form by law prescribed, shall be under the seal,

signed by the justice, and may be directed to the sheriff or his deputy of the county for which such justice is commissioned, or to any of the constables of any town in the same county. Provided, that no person shall be liable to be arrested and imprisoned on any writ, mesne process, or execution in any action founded on a contract made after the first day of January, in the year of our Lord one thousand eight hundred and nineteen, unless the debt or damage, for the recovery of which such action may be brought, shall exceed the sum of thirteen dollars and thirty-three cents. And in such cases the writ, process, or execution shall not run against the body of the debtor, but shall be, in all other respects, according to the forms established by law."

Sect. 11. And be it further enacted, that all writs of summons, scire facias, and writs of dower, shall be served by reading the same to the defendant, or by leaving an attested copy thereof, with a copy of the return endorsed thereon, at the last and usual place of such defendant's abode, and a copy of the writ of dower shall also be left with the tenant or occupant of the land whereof dower is demanded.

And when the goods or estate of any person shall be attached at the suit of another in any civil action, a summons in form of law, as is prescribed, shall be delivered to the party whose goods or estate are attached or left at his or her dwelling house, or last and usual place of abode, fifteen days before the day of the sitting of the court to which such writ of attachment is returnable.

Sect. 16. And be it further enacted, that no person imprisoned upon mesne process shall be holden in prison by virtue of such process after judgment shall be rendered on such process, on which such prisoner may have execution against the plaintiff, or above the space of thirty days next after judgment shall be rendered thereon, upon which the creditor may have execution; nor shall the prison keeper discharge a person committed on mesne process, when judgment shall be given on such mesne process for the plaintiff, on which execution may be taken out, until the expiration of thirty days from the time of rendering such judgment as aforesaid, that the creditor may, if he please, take his body in execution, unless the creditor shall by writing under his hand order the prison keeper sooner to discharge such prisoner. And all goods or estate attached to respond the judgment that may be given in any suit, shall be held until the expiration of thirty days next after the rendering of such judgment on which the plaintiff may have execution, or until judgment be rendered thereon for the defendant, upon which he may have execution against the plaintiff, to the intent that the plaintiff may levy his execution on the same goods or estate, unless judgment shall be sooner otherwise satisfied.

Sec. 25. And be it further enacted, that when the real estate of any person or persons in this State shall be attached on mesne process by virtue of any writ or process, the officer making such attachment shall leave a true and attested copy of such writ or process, together with a true and attested copy of his return thereon, at the office of the town clerk of the town or place in which such real estate lies, and the dwelling house

of each town clerk shall be his office for said purpose; and the attachment of such real estate shall not be deemed and considered as made until such attested copies shall have been left in manner aforesaid: and in case there be no town clerks (clerk) in such town or place, then the officer making such attachment shall leave, within ten days after such attachment shall have been made, a copy of such writ or process and return, as before required, with the clerk of the court of common pleas in the county where such estate lies; and in such case the attachment shall not be considered as made until such attested copy shall have been left with the clerk in manner aforesaid. Provided, however, that the return of the officer shall always be deemed and taken as sufficient evidence that such attested copy as aforesaid has been left with the town clerk, or clerks of the court of common pleas, as in this act is required. And provided further, that it shall not be deemed necessary to the validity of the attachment that the officer making that attachment shall go on to the land.

Sect. 26. And be it further enacted, that it shall be the duty of such town clerk, or clerk of the court of common pleas, to receive such copies, and to minute thereon the time when such copies are received, and to keep the same on file, for which services he shall be entitled to receive of such officer the sum of seventeen cents; and the officer making such attachment and leaving such copies shall be entitled to tax, in addition to his other fees, the travel from the place where the attachment is made to the office of such town clerk, or clerk of the court of common pleas, and also for such copies; on the ground of said statute and said sections of said statutes of said State being repugnant to a statute of the United States, entitled "an act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841, and the decision was in favor of such the validity of said statute and said sections of said statutes of said State.

There is also manifest error in this, that by the record, proceedings, and judgment aforesaid, it appears that said demurrer was overruled, and said replication adjudged good and sufficient in law, and judgment was given that said James Ledden recover his damages and costs, to be satisfied on said property attached; whereas by the laws of the land judgment in said suit ought to have been given, that said demurrer was sufficient in law, and that said replication was insufficient in law, and bad; and that said James Ledden no further have or maintain his said action against said Abraham Colby; and that said Abraham Colby recover his costs.

There is also manifest error in this, that by the record, proceedings, and judgment aforesaid, it appears that said judgment is in other respects informal and illegal.

And the said Abraham Colby prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment.

ABRAHAM COLBY,
By his attorney, JOSIAH H. HOBBS.

STATE OF NEW HAMPSHIRE,
Carroll, ss: Fourth judicial district.

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy of the original.

In testimony whereof, I have hereto set my hand, and affixed the seal of said court, this 3d day of November, A. D. 1845.

[L. S.]

FRANCIS R. CHASE, *Clerk*.

FOURTH JUDICIAL DISTRICT, *Carroll, ss:*
Superior court of judicature, July term, A. D. 1845.

ABRAHAM COLBY, plaintiff in error,
vs.
JAMES LEDDEN.

And the said James Ledden comes and says, that there is no error either in the record or proceedings, or in giving judgment aforesaid, and prays that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

By their attorneys, EMERSON & HALL.

STATE OF NEW HAMPSHIRE,
Carroll, ss: Fourth judicial district.

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy of the original on file.

In testimony whereof, I have hereto affixed the seal of said court, and set my hand this 3d day of November, A. D. 1845.

[L. S.]

FRANCIS R. CHASE, *Clerk*.

STATE OF NEW HAMPSHIRE, *Carroll, ss:*

At the superior court of judicature, holden at Ossipee, in said county, within and for the fourth judicial district, on the fourth Tuesday of July, in the year of our Lord one thousand eight hundred and forty-five.

Present, the honorable Joel Parker, chief justice,
the honorable Andrew S. Woods, associate justice.

ABRAHAM COLBY, plaintiff in error,
vs.
JAMES LEDDEN.

This was a writ of error sued out by Abraham Colby, of Eaton, in said county of Carroll, esquire, against James Ledden, of Miramichi, in the county of Northumberland, and province of New Brunswick, merchant, to reverse a judgment recovered by said Ledden, as surviving partner of James Abbott, against said Colby, as surviving partner of the late firm of Colby & Emery, by the consideration of our court

of common pleas, holden at Ossipee, within and for our county of Carroll, on the third Tuesday of May, in the year of our Lord one thousand eight hundred and forty-five.

The writ was returned and entered at this term of the court, and the said Abraham Colby appeared by Josiah H. Hobbs, his attorney, and filed his assignment of errors; that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, to wit, that in the record, proceedings, and judgment aforesaid, it appears that there was drawn in question the construction of a statute of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841, and that the decision was against the title, right, privilege, and exemption specially set up and claimed by said Abraham Colby under said statute.

There is also manifest error in this, that by the record, proceedings, and judgment aforesaid, it appears that there was drawn in question the construction of two clauses of a statute of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841, one being part of the second section of said act, and in the words following:

"And provided, also, that nothing in this act contained shall be construed to annul, destroy, or impair any lawful rights of married women or minors, or any liens, mortgages, or other securities on property, real or personal, which may be valid by the laws of the States, respectively, and which are not inconsistent with the provisions of the second and fifth sections of this act;" the other being part of the fourth section of said act, and in the words following: "And such discharge and certificate, when duly granted, shall in all courts of justice be deemed a full and complete discharge of all debts, contracts, and other engagements of such bankrupt, which are proveable under this act, and shall be and may be pleaded as a full and complete bar to all suits brought in any court of judicature whatever, and the same shall be conclusive evidence of itself in favor of such bankrupt, unless the same shall be impeached for some fraud or wilful concealment by him of his property or rights of property as aforesaid, contrary to the provisions of this act, on prior reasonable notice, specifying in writing such fraud or concealment," and the decision was against the title, right, privilege, and exemption specially set up and claimed by said Abraham Colby under said clauses of said act of Congress.

There is also manifest error in this, that by the record, proceedings, and judgment aforesaid, it appears that there was drawn in question the validity of the first section of a statute of the State of New Hampshire, made and passed by the general court of said State, February 11, 1791, title 10; and a statute of the State of New Hampshire, made and passed by the general court of said State, February 2, 1794, title 24, chapter 20, together prescribing and giving the form of the writ of attachment aforesaid; and the first, eleventh, sixteenth, twenty-fifth, and twenty-sixth sections of a statute of the State of New Hampshire, made

and passed by the general court of said State, January 2, 1829, title 19, chapter 3, in the words following:

"Be it enacted by the senate and house of representatives in general court convened, that all writs and processes, issuing from the superior court of judicature and court of common pleas, shall be in the name of the State of New Hampshire, shall be under the seal of the court whence they issue, shall bear the test of the first justice of the court, who is not a party, and be signed by the clerk of such court, and may be directed to the sheriff, or his deputy, of any county in the State; and shall have force in any county, and be obeyed and executed by any officer to whom the same shall be lawfully directed; and all original process, in either of the courts aforesaid, shall be summons or attachment, and shall be made out in the forms by law prescribed, and, in civil cases, shall be served and executed fifteen days before the sitting of the court to which such process is returnable, and shall be, by the officer who executed the same, returned to the court whence it issued, agreeably to the command therein given. And all writs issuing from any justice of the peace, shall be in the form by law prescribed, shall be under seal, signed by the justice, and may be directed to the sheriff, or his deputy, of the county for which such justice is commissioned, or to any of the constables of any town in the same county: Provided, that no person shall be liable to be arrested and imprisoned on any writ, mesne process, or execution, in any action founded on a contract made after the first day of January, in the year of our Lord one thousand eight hundred and nineteen, unless the debt or damage, for the recovery of which such action may be brought, shall exceed the sum of thirteen dollars and thirty-three cents. And in such cases, the writ, process, or execution shall not run against the body of the debtor, but shall be in all other respects according to the forms established by law.

Sec. 11. And be it further enacted, that all writs of summons, scire facias, and writs of dower, shall be served by reading the same to the defendant, or leaving an attested copy thereof, with a copy of the return endorsed thereon, at the last and usual place of such defendant's abode; and a copy of the writ of dower shall also be left with the tenant or occupant of the land whereof dower is demanded. And when the goods or estate of any person shall be attached at the suit of another, in any civil action, a summons in form of law, as is prescribed, shall be delivered to the party whose goods or estate are attached, or left at his or her dwelling house, or last and usual place of abode, fifteen days before the day of the sitting of the court to which such writ of attachment is returnable.

Sec. 16. And be it further enacted, That no person imprisoned upon mesne process, shall be holden in prison by virtue of such process, after judgment shall be rendered on such process, on which such prisoner may have execution against the plaintiff, or above the space of thirty days next after judgment shall be rendered thereon, upon which the creditor may have execution; nor shall the prison keeper discharge a

person committed on mesne process, when judgment shall be given on such mesne process for the plaintiff, on which execution may be taken out, until the expiration of thirty days from the time of rendering such judgment as aforesaid; that the creditor may, if he please, take his body in execution, unless the creditor shall, by writing under his hand, order the prison keeper sooner to discharge such prisoner. And all goods or estate attached, to respond the judgment that may be given in any suit, shall be held until the expiration of thirty days next after the rendering of such judgment, on which the plaintiff may have execution, or until judgment be rendered thereon for the defendant, upon which he may have execution against the plaintiff, to the intent that the plaintiff may levy his execution on the same goods or estate, unless judgment shall be sooner otherwise satisfied.

Sect. 25. And be it further enacted, that when the real estate of any person or persons in this State shall be attached on mesne process, by virtue of any writ or process, the officer making such attachment shall leave a true and attested copy of such writ or process, together with a true and attested copy of his return thereon, at the office of the town clerk of the town or place in wh ch such real estate lies, and the dwelling house of each town clerk shall be his office for said purpose; and the attachment of such real estate shall not be deemed and considered as made, until such attested copies shall have been left in manner aforesaid.

And in case there be no town clerks (clerk) in such town or place, then the officer making such attachment shall leave, within ten days after such attachment shall have been made, a copy of such writ or process and return, as before required, with the clerk of the court of common pleas, in the county where such estate lies. And in such case the attachment shall not be considered as made, until such attested copy shall have been left with the clerk in manner aforesaid. Provided, however, that the return of the officer shall always be deemed and taken as sufficient evidence that such attested copy as aforesaid has been left with the town clerk or clerk of the court of common pleas, as in this act is required. And provided, further, that it shall not be deemed necessary to the validity of the attachment that the officer making that attachment shall go on to the land.

Sect. 26. And be it further enacted, that it shall be the duty of such town clerk or clerk of the court of common pleas to receive such copies, and to minute thereon the time when such copies are received, and to keep the same on file, for which services he shall be entitled to receive of each officer the sum of seventeen cents; and the officer making such attachment, and leaving such copies, shall be entitled to tax, in addition to his other fees, the travel from the place where the attachment is made to the office of such town clerk or clerk of the court of common pleas, and also for such copies, on the ground of said statute and *and* said sections of said statutes of said State being repugnant to a statute of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed August 19, 1841, and the deci-

sion was in favor of such the validity of said statute and said sections of said statutes of said State.

There is also manifest error in this, that by the record, proceedings, and judgment aforesaid, it appears that said demurrer was overruled, and said replication, adjudged good and sufficient in law and judgment, was given, that said James Ledden recover his damages and costs, to be satisfied on said property attached; whereas, by the laws of the land, judgment in said suit ought to have been given that said demurrer was sufficient in law, and that said replication was insufficient in law, and bad; and that said James Ledden no further have or maintain his said action against said Abraham Colby, and that said Abraham Colby recover his costs.

There is also manifest error in this, that, by the record, proceedings, and judgment aforesaid, it appears that said judgment is, in other respects, informal and illegal.

And the said Abraham Colby prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he has lost by occasion of the said judgment.

And the said James Ledden appeared, by Emerson and Hall, his attorneys, and pleaded.

And the said James Ledden comes and says, there is no error, either in the record or proceedings, or in giving judgment aforesaid, and prays that the court here may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

Said matter having been considered by the court here, it is ordered by the court that the judgment of the court of common pleas be affirmed.

Attest: F. R. CHASE, *Clerk*.

STATE OF NEW HAMPSHIRE,

Carroll, ss: Fourth judicial circuit:

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the foregoing is a true copy as of record.

In testimony whereof, I have hereunto set my hand, and affixed the [SEAL.] seal of said court, this 3d day of November, A. D. 1845.

FRANCIS R. CHASE, *Clerk*.

THE STATE OF NEW HAMPSHIRE, *Carroll, ss:*

I, Francis R. Chase, clerk of the superior court of judicature for said county, hereby certify, that the papers hereto annexed are true copies of the papers filed of the original papers and records used and made in the case of Abraham Colby, plaintiff in error, against James Ledden.

In testimony whereof, I have hereto set my hand and affixed the [SEAL.] seal of said court, this 3d day of November, A. D. 1845.

FRANCIS R. CHASE, *Clerk*.

UNITED STATES, *ss*:

The President of the United States, to the chief justice and other justices of the superior court of judicature, of the State of New [L. S.] Hampshire, holden in and for the fourth judicial district of said State of New Hampshire, greeting:

Because that, in the record and process, and also in the rendering of judgment in a suit before you, or some of you, between James Ledden, of Merrimache, in the county of Northumberland, and province of New Brunswick, merchant, surviving partner of James Abbott and Abraham Colby, of Eaton, in the county of Carroll, in said State of New Hampshire, esquire, by the name of Abraham Colby, of Eaton, in the county of Strafford, esquire, surviving partner of the late firm of Colby and Emery, which judgment was rendered at a term of said superior court, holden at Ossipee, in and for the fourth judicial district of said State of New Hampshire, on the fourth Tuesday of July, A. D. 1845, affirming a judgment rendered against said Abraham Colby, the term of the court of common pleas, holden at Ossipee, within and for said county of Carroll, on the third Tuesday of May, A. D. 1845, "in a plea of debt, said James Ledden vs. said Abraham Colby," a manifest error has intervened, to the great damage of the said Abraham Colby, as in his complaint has been alleged; and as it is just and proper that the error, if any there be, be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded, that if judgment thereof be given, then, under your seals, or the seals of one of you, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the chief justice and the associate justices of the Supreme Court of the United States, on the first Monday of December next, at Washington, being the present seat of the National Government, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Roger B. Taney, esquire, chief justice of the said Supreme Court, at Washington aforesaid, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the seventieth.

JOHN L. HAYES, *Clerk*.

A bond, with two and sufficient sureties, for the due prosecution of the present writ of error, having been given in pursuance of law, and approved by me, I do thereupon allow this writ of error.

LEVI WOODBURY,

One of the associate justices of the Sup. Court of the U. States.

STATE OF NEW HAMPSHIRE:

The record and process in the suit aforesaid, with the proceedings

therein, I herewith send, as above commanded, under the seal of the superior court of judicature, duly certified by Francis R. Chase, clerk of said court, for the county of Carroll.

JOEL PARKER,
Chief justice sup. court of N. H.

UNITED STATES OF AMERICA,

District of New Hampshire, ss:

To James Ledden, of Merrimacke, in the county of Northumberland, and province of New Brunswick, merchant, and surviving partner of James Abbott, greeting:

Whereas there has issued, with my allowance, having taken our security, a writ of error, bearing date the twenty-fourth day of November, A. D. one thousand eight hundred and forty-five, and bearing teste of the chief justice of the United States, directed to the chief justice and the other justices of the superior court of judicature of the said State of New Hampshire, holden within and for the fourth judicial district of the said State, wherein it is suggested that, in the record and process, and also in the rendering of judgment, in a certain suit in said court, wherein Abraham Colby, of Eaton, in the county of Carroll, in said State of New Hampshire, was plaintiff in error, and you, the said James Ledden, were defendant in error, which judgment was rendered at a term of said superior court, holden at Ossipee, in and for the fourth judicial district of said State of New Hampshire, on the fourth Tuesday of July, A. D. 1845, affirming a judgment rendered against said Abraham Colby, at the term of the court of common pleas, holden at Ossipee, within and for said county of Carroll, on the third Tuesday of May, A. D. 1845, "in a plea of debt, said James Ledden vs. said Abraham Colby," a manifest error has intervened, to the great damage of the said Abraham Colby, and contrary to the laws of the United States, as the said Abraham, in his complaint, has alleged, and the said chief justice, and other judges, are thereby commanded, if judgment thereon be given, that, under their seals, or the seals of one of them, they do distinctly and openly send the record and process in the said suit, and all things concerning the same, together with the said writ, so that the same be had and returned to the next term of the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the first Monday of December next ensuing; that the record and process aforesaid being inspected, the said Supreme Court may cause to be done thereupon what of right ought to be done.

You, therefore, will take notice of the said writ of error, and of the return and filing of the same as aforesaid, and you are hereby cited, if you see cause, to appear at the said Supreme Court of the United States, to be holden as aforesaid, to make answer thereto.

Given under my hand and seal this 11th day of December, A. D. one thousand eight hundred and forty-five.

LEVI WOODBURY. [SEAL.]

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NEW HAMPSHIRE DISTRICT, *ss:*

December 23d, 1845.

I have notified the within named James Ledden, as within commanded, by giving in hand, to Samuel Emerson, esquire, of Moultonborough, in said district, attorney to said Ledden in the within named action, a true and attested copy of the within citation, with a true and attested copy of this my return thereon.

NATHANIEL WIGGIN, *Deputy marshal.*

Fees $15 00.

Filed 13th January, 1846.